

(d) There may be situations where a special government employee has a responsible position with his or her regular employer which requires the employee to participate personally in a particular matter before the Board or RTC. In this situation, assuming that such representation is not prohibited by 18 U.S.C. 203 or 205, the special government employee should participate in the matter for his or her regular employer only with the knowledge and approval of the President, after consultation with the DAEO. However, an independent member of the Oversight Board or a member of a National or Regional Advisory Board may not represent his or her regular employer in, and must be fully recused from agency deliberations or actions concerning any contract or other particular matter such employer has before or involving the Oversight Board or RTC, and must also be prohibited from sharing in any fees or profits directly attributable to such contract or other particular matter. Employers of those who serve as independent members of the Oversight Board or members of a National or Regional Advisory Board are not barred from contracting with the Oversight Board.

(e) Section 205 of title 18, U.S.C., permits a special government employee to represent, with or without compensation, a parent, spouse, child, or another person or an estate he or she serves as a fiduciary, but only if he or she has the approval of the official responsible for appointments to his or her position and the matter involved is neither one in which he or she has participated personally or substantially nor one under his or her official responsibility. What constitutes personal and substantial participation in a matter is discussed in §1505.34(b). The term "official responsibility" is defined in 18 U.S.C. 202 to mean the direct administrative or operating authority, whether immediate or final and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct action in the Board or RTC.

#### **§ 1505.33 Applicability of 18 U.S.C. 207.**

Section 207 of title 18, U.S.C., applies to individuals who have left Govern-

ment service, including former special government employees. It prevents a former employee or special government employee from representing another person in connection with certain matters (or making oral or written communications, with the intent to influence, to the Government or a court) in which he or she participated personally and substantially on behalf of the Government. The matters are those involving a specific party or parties in which the United States is also a party or has a direct and substantial interest. What constitutes personal and substantial participation in a matter is discussed in §1505.34(b). In addition, section 207 of title 18, U.S.C. prevents a former employee for a period of two years after his or her responsibility for a matter has ceased, from representing another person (or making oral or written communications with the intent to influence) in such matter before a court, department or agency if the matter was actually pending within the area of his or her official responsibility at any time in the last year prior to termination of the employee's responsibility.

[55 FR 5358, Feb. 14, 1990; 55 FR 11719, Mar. 29, 1990]

#### **§ 1505.34 Applicability of 18 U.S.C. 208.**

(a) Section 208 of title 18, U.S.C., bears on the activities of Government personnel, including special government employees in the course of their official duties. In general, it prevents an employee or special Government employee from participating personally and substantially as a Government officer or employee in a particular matter in which, to his or her knowledge, the employee, the employee's spouse, minor child, partner, or a profit or nonprofit organization with which the employee has or is serving as officer, director, trustee, partner or employee, or any person or organization with whom the employee is negotiating or has any arrangement concerning prospective employment, has a financial interest. Waivers may be granted by the President, after consultation with the DAEO and the Office of Government Ethics. Until a waiver is granted, special government employees are disqualified from participating in

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any matter in which such a financial interest exists.

(b) For the purposes of 18 U.S.C. 208, the phrase “participates personally and substantially in a particular matter” applies to participation through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, change, accusation, arrest, or other particular matter. Accordingly, a special government employee should in general be disqualified from participating as such in a matter of any type the outcome of which will have a direct and predictable effect upon the financial interests covered by section 208.

#### § 1505.35 Use of Board employment.

A special government employee shall not use his or her Board employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or herself or another person, particularly one with whom he or she has family, business, or financial ties.

#### § 1505.36 Use of inside information.

(a) A special government employee shall not use any inside information obtained as a result of his or her Board employment for private gain for himself or herself or another person, either by direct action on his or her part or by counsel, recommendation, or suggestion to another person, particularly one with whom he or she has family, business, or financial ties. For the purpose of this section, “inside information” means information obtained under Board or RTC authority which has not become part of the body of public information.

(b) The provisions of §1505.11(a) through (d) with regard to employees shall be applicable to special government employees.

#### § 1505.37 Coercion.

A special government employee shall not use his or her Board employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or herself or another person particularly one with whom he

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or she has family, business, or financial ties.

#### § 1505.38 Advice on rules of conduct and conflicts of interest statutes.

Any special government employee having any doubt as to the ethics of any conduct falling within the conflicts of interest statutes, or regulations, should confer with the DAEO. Assistance in interpreting the conflicts of interest statutes, these regulations, and any other instructions involving conduct and conflicts of interest, will also be provided by the DAEO to any special government employee, prospective special government employee, and their appointing officials and supervisors desiring it.

#### § 1505.39 Disclosure of employment and financial interests.

Special government employees will be required to file a confidential statement of employment and financial interests in accordance with § 1505.24, or a Financial Disclosure Report (SF 278) in accordance with § 1505.25.

### Subpart G—Competence, Experience, Integrity, and Fitness of Resolution Trust Corporation Employees

#### § 1505.40 Minimum competence, experience, integrity, and fitness requirements for Resolution Trust Corporation employees.

(a) For the purposes of this section:

(1) *Default* has the meaning set forth in 12 CFR 1506.2(d).

(2) *Pattern or practice of defalcation* has the meaning set forth in 12 CFR 1506.2(k).

(3) *Loss* has the meaning set forth in 12 CFR 1506.2(g).

(4) *Material obligation* has the meaning set forth in 12 CFR 1506.2(i).

(5) *Substantial loss to the Federal Deposit insurance funds* has the meaning set forth in 12 CFR 1506.2(t).

(b) The RTC shall prescribe policies and procedures which, at a minimum ensure that any individual (not subject to the regulations at 12 CFR part 1506 or 12 CFR part 1606) who is performing, directly or indirectly, any function or service on behalf of the RTC meets